IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 11 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF C.E.& CUSTOMS

Versus

K.J.VAKHARIA & CO.

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 11 of 1999
MS PJ DAVAWALA for Petitioner No. 1
RULE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 29/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule was issued on this application. The office endorsement shows that Rule is unserved. It is, however, not necessary to await for service of rule on the respondent since we are taking the view in favour of the respondent and against the applicant.

2. This is an application filed by the Commissioner of Central Excise and Customs, Surat seeking a direction to the Customs, Excise & Gold (Control) Appellate Tribunal, Mumbai to refer the statement of case and the following question under subsection (1) of Section 35(H) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"):-

"Whether the provisions of fine and penalty as given in Central Excise Act, 1944 are applicable to the goods i.e. Man Made Fabrics (MMF) which are subject to Additional Excise Duties in terms of Additional Duties of Excise (Goods of Special Importance) Act, 1957 ?"

In the order giving rise to this reference, the Tribunal has placed reliance on the decision of the Delhi High Court in Pioneer Silk Mills vs. Union of India reported in 1995 (80) ELT 507 wherein it has been held that the penalty provisions contained in Central Excise Act, 1944 were not applicable to the man made fabrics as no such provisions were found in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as "the Act of 1957") before the amendment of the latter in 1994.

3. Earlier, this very question came to be referred to this Court in Central Excise and Customs Gold Control Ref. No.1 of 2001. After considering the aforesaid decision of the Delhi High Court in Pioneer Silk Mills (supra), this Court answered the reference in favour of the revenue for the following reasons:-

"9.3 It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation

provisions would be reduced to a donation drive in respect of these very items for which duty of excise is also imposed under the Central Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.

10. The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.

11. For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.

12. We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of section 3(1) of the Additional Duties of Excise Act and are `excisable goods' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 and Rules made thereunder.

The question referred to us is answered

accordingly in favour of the Revenue and against the assessee. There shall be no order as to costs.

4. In the present application again, the same question is sought to be referred. Ordinarily once this Court made the aforesaid pronouncement of law on 22-1-2002, there would be no need to make any such reference application again. However, our attention is now invited to the decision of the Hon'ble Supreme Court in Civil Appeal No.1851-1857 of 1994 in Union of India and ors. vs. Sanghi Textile Processors & ors. decided on 10-4-2002 wherein it is held that no interference of the Apex Court was called for and the appeals were accordingly
dismissed.

The aforesaid appeals were filed against the Delhi High Court decision dated September 9, 1991 in Pioneer Silk Mills Ltd. (CW 789/90) and in the case of Sanghi Textile (CW 750/90) along with the writ petitions of other parties. The Division Bench of the Delhi High Court comprising of Hon'ble Mr Justice D.P. Wadhva and Hon'ble Mr Justice Bhandari held in the said decision that the provisions contained in the Central Excise Act, 1944 were not applicable to the man made fabrics which were subjected to the duties by the 1957 Act as aforesaid. The Hon'ble Supreme Court has confirmed the view of the Delhi High Court in Union of India vs. Sanghi Textiles decided on 10-4-2002 as aforesaid.

5. Again in the decision dated 16-4-2002, the Hon'ble Supreme Court dismissed Civil Appeals Nos.22-23 of 1996 filed by Collector of Central Excise, Jaipur against the CEGAT order Nos.142 to 146/94-A dated 23-5-1994, reported in 1995 (75) ELT 427 (Tribunal) in the case of Rajasthan Processors (India) Ltd. vs. Collector of Central Excise, Jaipur, in the following terms:-

"The Civil Appeals must be dismissed, being covered against the Revenue by the decision of this Court delivered on 10th April, 2002 in the case of Union of India and ors. vs. Sanghi Textile Processors and ors. etc. (Civil Appeal Nos.1851-1857 of 1994)

Order accordingly.
No order as to costs."

We have perused the decision of the Tribunal in Rajasthan Processors (India) reported in 1995 (75) ELT

427 and having perused the same and the aforesaid order dated 16-4-2002 of the Hon'ble Supreme Court confirming the said decision of the Tribunal, we are clearly of the view that the controversy is now concluded by the Hon'ble Supreme Court against the revenue.

6. Ms PJ Davawala, learned Standing Counsel for the Central Government has, however submitted that the aforesaid decisions of the Hon'ble Supreme court are not speaking orders and, therefore, the decision of the Delhi High court in Pioneer Silk Mills Ltd. and in Sanghi Textiles cannot be said to have merged into the orders of the Hon'ble Supreme Court. Hence, the learned counsel for the revenue, wants us to follow the above decision dated 22-1-2002 of this Court in CECG Reference No.1 of 2001.

7. We are afraid the submission made by the learned Standing Counsel for the revenue cannot be accepted. The above quoted orders passed by the Hon'ble Supreme Court on 10-4-2002 and 16-4-2002 are not in Special Leave Petitions but those orders have dismissed Civil Appeals filed by the revenue against the decision of the Delhi High court in Sanghi Textile Processors (supra). Hence, the aforesaid decisions of the Delhi High Court and of the Tribunal have merged into the orders of the Hon'ble Supreme Court. The principles laid down by the Hon'ble Supreme Court in the case of V.M. Salgoacor and Brothers Pvt. Ltd. vs. CIT reported in AIR 200 SC 1623 make this legal position very clear. It has been held in the said decision that while the orders of the Hon'ble Supreme Court dismissing special leave petitions do not attract the doctrine of merger, the orders of the Hon'ble Supreme Court - even nonspeaking orders dismissing Civil Appeals do attract the doctrine of merger.

8. In view of the above discussion, now there can be no doubt or controversy about the legal position on the question sought to be referred, which is answered by the Hon'ble Supreme Court in favour of the assessee.

9. The Reference application accordingly deserves to be dismissed and is accordingly dismissed. Rule is discharged.

The writ of this Court shall be sent to the CEGAT, Mumbai expeditiously.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-